IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8747 of 1999
SPECIAL CIVIL APPLICATION No 8749 of 1999
SPECIAL CIVIL APPLICATION No 8750 of 1999
SPECIAL CIVIL APPLICATION No 8752 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVIN VINUBHAI GOHIL
BABUBHAI KHANABHAI SINDHAVA
DHARMENDRA @ DHAMO MANILAL VAGHELA
MUKESH VASHANTLAL PARMAR
Versus
COMMISSIONER OF POLICE

Appearance:
MR JK PARMAR for Petitioners
MR KT DAVE, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2000

COMMON ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad passed orders on September 2, 1999 in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act) detaining Pravin Vinubhai Gohil, Babubhai Khanabhai Sindhava, Dharmendra Dhamo Manilal Vaghela and Mukesh Vashantlal Parmar under the provisions of the said Act. The said detenues have preferred these petitions under Article 226 of the Constitution of India challenging the order of detention on various counts. Since the matters are of co-detenues involving identical facts, they are disposed of by this common judgement at the request of the learned advocates for the parties.

2. While passing the orders, the detaining authority took into consideration 5 offences registered against the detenues for theft. The detaining authority also took into consideration statements of 2 witnesses whose identity has not been disclosed by the detaining authority by claiming privilege under Section 9(2) of the PASA Act. The detaining authority recorded satisfaction about the genuineness of the fear expressed by the witnesses qua the detenue and need for claiming privilege evisaged under Section 9(2) of the PASA Act in public interest. After considering the less drastic remedies, the detaining authority concluded that detention under PASA is the only efficacious remedy which can be resorted to for immediately preventing the detenues from pursuing their activities.

3. The detenues/petitioners have preferred these petitions challenging the order of detention on various counts. However, Mr. Parmar has relied on the ground of improper exercise of powers under Section 9(2) of the PASA Act. In support of his say, he has submitted that the statements of the 2 witnesses were recorded on August 30th and 31st, 1999. The statements were verified by the detaining authority on September 2, 1999 and the order was passed on that very date. He therefore submitted that the detaining authority had no time to apply mind to the genuineness of the fear expressed by the witnesses

qua the detenues and for the need for exercising these powers in public interest. He submitted that the petition may be allowed.

4. Mr. Dave, learned AGP has opposed these petitions.

5. Having regard to rival side contentions, there is no dispute about the fact that the statements have been verified by the detaining authority on September 2, 1999 and the order of detention is passed on that very date. The detaining authority has not filed any affidavit in reply to indicate as to when the proposal was received, when the witnesses were summoned for verification, at what point of time the witnesses appeared and their statements were verified, when were the other papers perused, the order prepared and signed. While exercising powers under Section 9(2) of the PASA Act of claiming privilege, by not disclosing identity of witnesses the detaining authority has to be subjectively satisfied

about the genuineness of the fear expressed by the witnesses qua the detenues and the need for maintaining anonymity of the witnesses in public interest. In doing so, the authority has to take into consideration the character, the backgraound, the antecedents of the detenues as well as the witnesses and thereafter has to come to a positive conclusion that the fear expressed by the witnesses is correct and genuine. Mere assertion on part of the witnesses is not sufficient. This entire exercise would require and consume some time. In the instant case, the detaining authority has verified the statement on September 2, 1999 and the order is also passed on that very date. In the absence of any affidavit in reply, it is difficult for this court to appreciate how this entire exercise was undertaken by the detaining authority on a single day and therefore it appears that the time was not enough for the authority to arrive at a genuine subjective satisfaction for the need for exercise of powers under Section 9(2) of the said Act. The result is, that the power exercised by the detaining authority is improper.

6. Improper exercise of powers under Section 9(2) of the PASA Act results into infringement of right of the detenues by making an effective representation envisaged under Article 22(5) of the Constitution of India.

7. In view of the discussions, the subjective

satisfaction by the detaining authority for the need for

exercise of powers under Section 9(2) of the PASA Act cannot be considered as genuine or proper. The detention orders and consequently the detention, therefore, would be vitiated. The petitions deserve to be allowed.

8. The petitions are allowed for the foregoing reasons. The petitioners/detenues Pravin Vinubhai Gohil, Babubhai Khanabhai Sindhava, Dharmendra @ Dhamo Manilal Vaghela and Mukesh Vashantlal Parmar be set at liberty forthwith from the detentions, if not required in any other case. Rule made absolute. No costs.

(A.L. Dave, J.)

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